

SENATE BILL NO. 95

INTRODUCED BY ROUSH

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERM "OIL OR GAS WELL FACILITY"; DELAYING THE REQUIREMENT TO APPLY FOR AN AIR QUALITY PERMIT FOR AN OIL OR GAS WELL FACILITY TO JANUARY 3, 2006, OR 60 DAYS AFTER THE INITIAL WELL COMPLETION DATE, WHICHEVER IS LATER; REQUIRING ADOPTION OF RULES TO REGULATE FACILITIES UNTIL A PERMIT IS ISSUED; TRANSFERRING RULEMAKING AUTHORITY FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-218, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Board" means the board of environmental review provided for in 2-15-3502.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents;

1 and

2 (g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions
3 from humans or animals.

4 (13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

5 (i) equipment associated with the well and used for the purpose of producing, treating, separating, or
6 storing oil, natural gas, or other liquids produced by the well; and

7 (ii) a group of wells under common ownership or control that produce oil or natural gas and that share
8 common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other
9 liquids produced by the wells.

10 (b) The equipment referred to in subsection (13)(a) includes but is not limited to wellhead assemblies,
11 amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and
12 connecting tubing.

13 (C) THE TERM DOES NOT INCLUDE EQUIPMENT SUCH AS COMPRESSOR ENGINES USED FOR TRANSMISSION OF
14 OIL OR NATURAL GAS.

15 ~~(13)~~(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or
16 private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the
17 federal government or an agency of the federal government, or any other legal entity and includes persons
18 resident in Canada.

19 ~~(14)~~(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate,
20 officer, parent corporation, or subsidiary corporation.

21 ~~(15)~~(16) "Small business stationary source" means a stationary source that:

22 (a) is owned or operated by a person who employs 100 or fewer individuals;

23 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

24 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C.
25 7661, et seq.;

26 (d) emits less than 50 tons per year of an air pollutant;

27 (e) emits less than a total of 75 tons per year of all air pollutants combined; and

28 (f) is not excluded from this definition under 75-2-108(3).

29 ~~(16)~~(17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous
30 wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial

wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."

Section 2. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), and 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment

necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

1 (5) Department approval of an application to transfer a portable emission source from one location to
2 another is exempt from the provisions of 75-1-201(1).

3 (6) The department may, for good cause shown, waive or shorten the time required for filing the
4 appropriate applications.

5 (7) The department shall require that applications for permits be accompanied by any plans,
6 specifications, and other information that it considers necessary.

7 (8) An application is not considered filed until the applicant has submitted all fees required under
8 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)
9 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of
10 an application that the application is incomplete and fails to list the reasons why the application is considered
11 incomplete, the application is considered filed as of the date of the purported filing.

12 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of
13 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1
14 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

15 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the
16 department prepares the environmental impact statement;

17 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state
18 agency other than the department has been designated by the governor as lead agency for preparation of the
19 environmental impact statement; or

20 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
21 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement
22 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

23 (b) If an application does not require the preparation of an environmental impact statement, is not
24 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
25 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt
26 of a filed application, as provided in subsection (8), of its approval or denial of the application.

27 (c) If an application does not require the preparation of an environmental impact statement and is
28 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the
29 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
30 approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or
(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party

1 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees
2 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use
3 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

4 (12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written
5 notice that its application is considered filed pursuant to subsection (8) may:

6 (i) for a temporary power generation unit or units with a total electrical generation capacity of not more
7 than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the
8 department's issuance of a permit under this section.

9 (ii) for a temporary power generation unit or units with a total electrical generating capacity of 10
10 megawatts or less, construct and operate the unit or units.

11 (b) The construction or operation of a temporary power generation unit or units described in subsection
12 (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units
13 continues after a department decision to deny the permit application becomes final as provided in this section.

14 (c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation
15 unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the
16 department's deadline any additional information that is necessary to process the permit application.

17 (ii) The operation of a permit applicant's temporary power generation unit or units described in
18 subsection (12)(a) may not violate ambient air quality standards.

19 (d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire
20 no later than 2 years from the date that the department received the permit application and must require removal
21 of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for
22 permanent operation has been issued.

23 (13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on
24 draft air quality permits for applications that:

25 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

26 (b) are subject to the requirements of 75-2-215; or

27 (c) require the preparation of an environmental impact statement.

28 (14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or
29 creation of:

30 (i) general permits covering multiple similar sources; or

1 (ii) other permits covering multiple similar sources.

2 (b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the
3 permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005--sec.
4 4, Ch. 588, L. 2001.)

5 **75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use.** (1) The
6 board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit
7 issued under this part.

8 (2) (a) Except as provided in 75-1-208(4)(b), and 75-2-234, and subsections (2)(b) and (2)(c) of this
9 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of
10 any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to
11 air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator
12 shall file with the department the appropriate permit application on forms available from the department.

13 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
14 the permit application with the department no later than January 3, 2006, or 60 days after the initial well
15 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas
16 well facility is:

17 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
18 equipment into lease tanks from the ultimate producing interval after casing has been run; and

19 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of
20 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

21 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment
22 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on
23 the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator
24 may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,
25 installation, or operation of the facility.

26 (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas
27 well facility during the time from the initial well completion date until the department's decision on the application
28 is final.

29 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to
30 the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

1 (3) The permit program administered by the department pursuant to this section must include the
2 following:

3 (a) requirements and procedures for permit applications, including standard application forms;

4 (b) requirements and procedures for submittal of information necessary to determine the location,
5 quantity, and type of emissions;

6 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

7 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
8 agencies, as appropriate;

9 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

10 (f) procedures for the transfer of permits;

11 (g) requirements and procedures for suspension, modification, and revocation of permits by the
12 department;

13 (h) requirements and procedures for appropriate emission limitations and other requirements, including
14 enforceable measures necessary to ensure compliance with those limitations and requirements;

15 (i) requirements and procedures for permit modification and amendment; and

16 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
17 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance
18 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator
19 notify the department in advance of each change in location.

20 (4) This section does not restrict the board's authority to adopt regulations providing for a single air
21 quality permit system.

22 (5) Department approval of an application to transfer a portable emission source from one location to
23 another is exempt from the provisions of 75-1-201(1).

24 (6) The department may, for good cause shown, waive or shorten the time required for filing the
25 appropriate applications.

26 (7) The department shall require that applications for permits be accompanied by any plans,
27 specifications, and other information that it considers necessary.

28 (8) An application is not considered filed until the applicant has submitted all fees required under
29 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)
30 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of

1 an application that the application is incomplete and fails to list the reasons why the application is considered
2 incomplete, the application is considered filed as of the date of the purported filing.

3 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of
4 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1
5 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

6 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the
7 department prepares the environmental impact statement;

8 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state
9 agency other than the department has been designated by the governor as lead agency for preparation of the
10 environmental impact statement; or

11 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
12 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement
13 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

14 (b) If an application does not require the preparation of an environmental impact statement, is not
15 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
16 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt
17 of a filed application, as provided in subsection (8), of its approval or denial of the application.

18 (c) If an application does not require the preparation of an environmental impact statement and is
19 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the
20 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
21 approval or denial of the application.

22 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
23 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
24 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
25 application, as provided in subsection (8).

26 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
27 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department
28 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
29 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
30 within the time period provided for in 75-2-215(3)(e).

1 (f) The time for notification may be extended for 30 days by written agreement of the department and
2 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.
3 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's
4 agent.

5 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
6 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
7 the department to act in a timely manner.

8 (10) When the department approves or denies the application for a permit under this section, a person
9 who is jointly or severally adversely affected by the department's decision may request a hearing before the
10 board. The request for hearing must be filed within 15 days after the department renders its decision and must
11 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana
12 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this
13 subsection.

14 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the
15 date of the decision.

16 (b) The filing of a request for hearing does not stay the department's decision. However, the board may
17 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

18 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

19 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
20 requesting the stay.

21 (c) Upon granting a stay, the board may require a written undertaking to be given by the party
22 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees
23 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use
24 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

25 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on
26 draft air quality permits for applications that:

27 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

28 (b) are subject to the requirements of 75-2-215; or

29 (c) require the preparation of an environmental impact statement.

30 (13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or

1 creation of:

2 (i) general permits covering multiple similar sources; or

3 (ii) other permits covering multiple similar sources.

4 (b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the
5 permit upon authorization by the department or upon notice to the department."
6

7 **Section 3.** Section 75-2-218, MCA, is amended to read:

8 **"75-2-218. Permits for operation -- application completeness -- action by department --**
9 **application shield -- review by board.** (1) An application for an operating permit or renewal is not considered
10 filed until the department has determined that it is complete. An application is complete if all fees required under
11 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted.
12 A complete application must contain all of the information required for the department to begin processing the
13 application. If the department fails to notify the applicant in writing within 60 days after submittal of an application
14 that the application is incomplete and fails to list the reasons why the application is considered incomplete, the
15 application is considered filed on the date of the department's receipt of the application. The department may
16 request additional information after a completeness determination has been made. The department board shall
17 adopt rules that contain criteria for use in determining both when an application is complete and when additional
18 information is required after a completeness determination has been made.

19 (2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall,
20 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for
21 an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of
22 filing. Failure of the department to act in a timely manner does not constitute approval or denial of the
23 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
24 the department to act in a timely manner.

25 (3) The board may by rule provide for a transition schedule for both the submittal to the department of
26 initial applications for operating permits by existing sources and action by the department on these initial permit
27 applications. The board may require that one-third of all operating permit applications required for existing
28 sources be submitted within the first calendar year after the adoption of rules implementing an operating permit
29 program under 75-2-217.

30 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's

1 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and
2 complete application for an operating permit renewal, the expiration of the applicant's existing operating permit
3 is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the
4 expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The
5 applicant is not entitled to the protection of this subsection if the delay in final action by the department on the
6 application results from the applicant's failure to submit in a timely manner information requested by the
7 department to process the application.

8 (5) Except as provided in subsection (8), if the department approves or denies an application for an
9 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any
10 person that participated in the public comment process required under 75-2-217(7) may request a hearing before
11 the board. The request for a hearing must be filed within 30 days after the department renders its decision and
12 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana
13 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this
14 subsection.

15 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final
16 until 30 days have elapsed from the date of the decision.

17 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the
18 department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice
19 and opportunity for an informal hearing, that:

20 (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

21 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
22 requesting the hearing.

23 (c) Upon granting a stay, the board may require a written undertaking to be given by the party
24 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees
25 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use
26 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

27 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to
28 suspend, revoke, modify, or amend an operating permit issued under this section.

29 (8) The denial by the department of an application under 75-2-217 and this section is not subject to
30 review by the board or judicial review if the basis for denial is the written objection of the appropriate federal

1 agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

2 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is
3 considered to be compliance with the requirements of this chapter only if the permit expressly includes those
4 requirements or an express determination that those requirements are not applicable. This subsection does not
5 apply to general permits provided for under 75-2-217."

6
7 NEW SECTION. **Section 4. Effective date.** [This act] is effective January 1, 2006.

8 - END -